

**REMARKS**

Reconsideration in view of the foregoing Amendments and the following remarks is respectfully requested. Moreover, the Applicant has reviewed the Final Office Action of July 17, 2003, and submits that the above Amendments and the following Remarks are responsive to all points raised therein.

**I. Phone Interview**

This paper and the claim amendments were made in furtherance to the Telephonic Interview conducted between Examiner Lien Tran and the undersigned on November 14, 2003.

Pursuant to the Interview the above claims were revised to overcome the arguments raised by the Examiner in the Final Office Action. During the discussion the Examiner proposed claim revisions that would overcome the prior art rejections and place the claims in form as readily distinguishable from the cited references and ready for issuance. The Applicant agrees with the Examiner's revisions and has duly recorded the amended claims above.

**II. Claim Amendments**

Applicant has amended the claims to overcome the arguments raised by the Examiner in the Final Office Action. The Examiner has indicated that the language of the original claims; "do not exclude the coating and fat ingredient required by Becker et al." By amending the language of the claims the Applicant has rewritten the claims in allowable form, by specifically excluding other elements such as the coating and fat ingredient, as required by Becker et al., from the claims.

**II. Rejection under 35 U.S.C. § 103(a)**

The Applicant reiterates the arguments raised in the Response filed on April 30, 2003. And because of the amendments made to the claims that include amending “comprising” and “comprises” to “consisting of” and “consists of,” the Applicant asserts that the invention recited in the present claims is readily distinguishable from the cited reference.

The Examiner states claims 1 through 11 were rejected under 35 U.S.C. §103(a) “as being unpatentable over Becker et al., U.S. Patent 4,568,557 (the ‘557 patent) in view of McWard, a journal article titled “Integrating value: specialty flours and grains” Baking and Snack, 1995 (McWard).

The Examiner’s argument for rejection is based on the ‘557 patent that discloses an invention related to a process for making a snack food product. The food product contains an amount of dietary fiber with an oil derived from a food grade product to form a pre-mix (1). The dietary fiber is a mixture of corn bran and corn germ. In addition, the food product contains a coating compound, pre-mix (2), composed of an amount of fractionated fat, a sweetener, milk solids, yogurt, and a flavoring agent. The pre-mix (1) and pre-mix (2) are blended together, along with a cereal product, for the desired texture, and extruded at a temperature between 100° F to about 125° F (37° C to 52° C). The extrusion temperature is congruent with forming extrusion, which is used, in processing a food product into a desired shape.

The ‘557 patent discloses that it is critical to the invention to allow the dietary fiber to be mixed with a high fat ingredient to develop flavor and taste. The ‘557 patent also teaches that it is critical to combine the fiber with a compound coating which also must contain a fat portion and at least one sweetener, “it must be sufficient in physical make-up to provide adequate bulk and texture” (column 7, line 50).

Nowhere, does the '557 patent teach that the food product can be made without the addition of a high fat ingredient and a sweetener. The claims of the current invention directly teach away from the '557 patent by teaching a method of using Prowashonupana barley and a secondary grain constituent without a high fat ingredient and sweetener to produce a final food product that contributes to a lowered glycemic index when consumed.

The Examiner further argues that the present invention is obvious when the '557 patent is viewed with the McWard publication. McWard teaches using Prowashonupana barley in place of other grain constituents to form products that are determined to be high in fiber and beneficial in controlling diabetes. All arguments from above are relevant for overcoming this rejection.

As previously mentioned, the '557 patent requires that it is critical to the invention to allow the dietary fiber to be mixed with a high fat ingredient, a compound coating that must contain a fat portion, and at least one sweetener. Nowhere, does the combination of the '557 patent and the McWard publication teach mixing Prowashonupana barley with another grain constituent to form a grain mixture, which is then extruded at temperatures high enough to "cook" the extruded product, 66° C to 120° C, and thus change its final texture. Furthermore, the combinations of the cited prior art references do not teach a food product that is produced without a high fat ingredient and a compound coating (sweetener). As such, the present invention is not taught, suggested, or made obvious by any of the cited prior art references either alone or in combination.

### **III. Conclusion**

For the above-discussed reason, it is asserted that none of the cited references, either alone or in combination, teach, suggest, or make obvious the present invention, and in particular, a method of using Prowashonupana barley with other secondary grain constituents whereby

extruding and cooking the Prowashonupana barley and secondary grain constituent to produce a food product that contributes to a lowered glycemic index when consumed.

Should the Examiner have any questions or comments as to form, content, or entry of this paper, the Examiner is requested to contact the undersigned at the telephone number below. Similarly, if there are any further issues yet to be resolved to advance prosecution of this application to issue, the Examiner is requested to telephone the undersigned counsel.

Allowance of all pending claims 1-11 is respectfully requested.

Respectfully submitted,

POLSINELLI SHALTON & WELTE, P.C.



Michael A. Williamson, Reg. No. 54,541  
700 W. 47<sup>th</sup> Street, Suite 1000  
Kansas City, Missouri 64112  
Tel: (816) 360-4168  
Fax: (816) 753-1536  
Attorney for Applicant